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Anna A. Bradshaw

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FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	GC Docket No. 95-172
)	
RAINBOW BROADCASTING COMPANY)	File No. BMPCT-910625KP
)	File No. BMPCT-910125KE
For an Extension of Time to)	File No. BTCCT-911129KT
Construct)	
)	
and)	
)	
For an Assignment of its)	
Construction Permit for)	
Station WRBW (TV),)	
Orlando, Florida)	

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:	GC Docket No. 95-172
RAINBOW BROADCASTING COMPANY	File No. BMPCT-910625KP
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For an Extension of Time to Construct	File No. BTCCT-911129KT

and

For an Assignment of its
Construction Permit for
Station WRBW (TV),
Orlando, Florida

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Thursday,
May 16, 1996

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

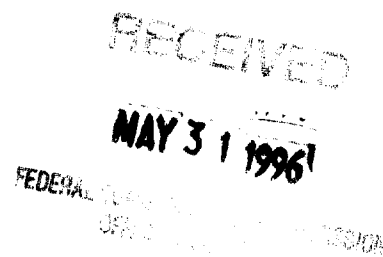
BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

APPEARANCES:

On behalf of Rainbow Broadcasting Company:

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APPEARANCES: (CONTINUED)

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On behalf of Press Broadcasting Company, Inc.:

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On behalf of the FCC:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
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None.

E X H I B I T S

<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
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None.

Hearing Began: 9:00 a.m. Hearing Ended: 10:00 a.m.

1 accurately and adequately stated our case. And I have
2 nothing more to say on it.

3 JUDGE CHACHKIN: Is that --

4 MR. EISEN: I'd just like to raise one thing and
5 refer you to the documents attached to the joint response,
6 Your Honor --

7 JUDGE CHACHKIN: Yes

8 MR. EISEN: -- which both relate to Rainbow
9 Broadcasting, Limited; both the unexecuted agreement and the
10 letter of May 8, 1993 which is conditioned upon Rainbow
11 Broadcasting, Limited being the licensee. Mr. Loftus has
12 never had any connection with RBC. At the time that the
13 letter was written, or rather attached to the petition for
14 your consideration, the Commission hadn't even been granted
15 the assignment.

16 MR. COLE: Your Honor, if I may be heard on that.
17 Rainbow Company has provided in the course of discovery a
18 letter dated April of 1993 addressed to Mr. Ray of Rainbow
19 Broadcasting Company indicating Mr. Loftus' willingness to
20 provide funding and --

21 MR. EISEN: Yes, and that's --

22 MR. COLE: May I be heard, please?

23 MR. EISEN: I'm sorry.

24 MR. COLE: -- and furthermore, the petition for
25 reconsideration, the documents to which Mr. Eisen is

1 referring, was filed with the Commission by Rainbow
2 Broadcasting Company. And the text of that petition which
3 was prepared by Rainbow Broadcasting Company said that
4 Rainbow Broadcasting Company had arranged for financing; see
5 Exhibit E. And the documents that are attached were
6 referenced by Rainbow Broadcasting Company.

7 JUDGE CHACHKIN: Well, Rainbow Broadcasting,
8 Limited was not in existence at the time. Only --

9 MR. COLE: It was in existence.

10 JUDGE CHACHKIN: Well, I mean --

11 MR. COLE: It was not the permittee but it was in
12 existence.

13 JUDGE CHACHKIN: All right. But it was not the
14 permittee.

15 MR. COLE: That's correct.

16 JUDGE CHACHKIN: Rainbow Broadcasting Company was
17 the assignor.

18 MR. COLE: That's correct.

19 JUDGE CHACHKIN: So only they could file such a
20 request. But the fact of the matter is Mr. Loftus'
21 agreement to provide funds for equipment was not to take
22 place until and unless the Commission granted the
23 assignment. So it didn't change the status of Rainbow's
24 reliance on the funds from Mr. Conant to build and operate
25 the station. Did it? And that's why I have no idea why you

1 are pursuing anything concerning RBL and Mr. Loftus since
2 the applicant claims that it's -- the basis for it's
3 financial qualifications was the funds to be given by Mr.
4 Conant.

5 And, therefore, any representations they've made
6 concerning their use of equity, the use of funds as a result
7 of the assignment are irrelevant to the question as whether
8 or not they were financially qualified at the time of the
9 assignment. And therefore, I had no idea why you're
10 pursuing -- or RBL or Mr. Loftus or anything to do with the
11 assignment because they're not claiming that -- if they were
12 claiming that we had an alternate source of funding and,
13 therefore, even if you find that the funds for Mr. Conant
14 was deficient, therefore, we have this ultimate source of
15 funding, then I could understand it.

16 But they're -- they're willing to stand or fall on
17 Mr. Conant's loan. So why in the world if they're not
18 claiming that they relied on funding from Mr. Loftus or from
19 Equity Financing from the limited partners, why in the world
20 are you offering them an opportunity to make that argument?
21 I have no idea why you're pursuing it, frankly. How that --
22 how -- if they're not making the claim, why are you?

23 MR. COLE: Because in my view, Your Honor, they
24 did make the claim during the --

25 JUDGE CHACHKIN: But they're saying they didn't

1 make it. It's --

2 MR. COLE: Well, I understand they're saying that
3 now. But I think the --

4 JUDGE CHACHKIN: But there's no question that they
5 were -- they're financially qualified in so far as they did
6 have funding from Mr. Loftus and they did -- they did go
7 ahead and build a station. So what's the point of
8 questioning that? I don't understand it. I mean, it seems
9 to me that the Court was concerned and the Commission was
10 concerned about the Conant -- the availability of the Conant
11 loan. I mean, that's what's an issue. Why you're harping
12 on RBL's ability to finance a station I have no idea.

13 MR. COLE: Your Honor, I'm not harping on RBL's
14 ability. What I'm trying to get at is RBC's state of mind
15 concerning its financial qualification during the period of
16 1991 to 1993, a period during which it held a construction
17 permit and did not build.

18 JUDGE CHACHKIN: Yes. And what I'm saying is even
19 assuming arguendo that they had funds promised for Mr.
20 Loftus and the equity financing once they assigned the
21 applications, still they have to demonstrate that the
22 finance from Mr. Conant was still intact as of the time of
23 the assignment.

24 MR. BLOCK: Your Honor --

25 JUDGE CHACHKIN: Now, why -- why you're pursuing

1 RBL, I don't understand.

2 MR. BLOCK: Your Honor, may I be heard for a
3 moment on --

4 JUDGE CHACHKIN: Yes, go ahead.

5 MR. BLOCK: -- our view of this matter. We joined
6 in the request to depose Mr Loftus. And our approach was I
7 think it would help clarify what the relevance is.

8 JUDGE CHACHKIN: But you agree that Mr. Loftus had
9 nothing to do with Mr. Conant's promise?

10 MR. BLOCK: It appears to be the case.

11 JUDGE CHACHKIN: It doesn't appear. There's no
12 evidence that --

13 MR. BLOCK: That's one reason to have a
14 deposition. But let me --

15 JUDGE CHACHKIN: No no, no, no. The reason to
16 have depositions is if you have a basis, some kernel of fact
17 to go on; not because you want to go on a fishing
18 expedition.

19 MR. BLOCK: Let me suggest this as a -- the
20 relevance of the whole circumstances of the RBC/RBL
21 transaction. As I understand from what RBL has -- RBC has
22 said is that at some point in 1993, that it could not go
23 forward with construction until there was an assignment to
24 RBL. I take that as an admission that -- you've commented
25 in the past that they have a choice. They could choose

1 equity financing or debt financing.

2 JUDGE CHACHKIN: I didn't say they had a choice.

3 MR. BLOCK: Well, they --

4 JUDGE CHACHKIN: As far as the Commission is
5 concerned, they had to have available --

6 MR. BLOCK: Right.

7 JUDGE CHACHKIN: -- the Conant loan --

8 MR. BLOCK: Right.

9 JUDGE CHACHKIN: -- regardless of what ultimate
10 financing they ultimately use.

11 MR. BLOCK: Exactly, exactly. But the point is is
12 that statement that they can't go forward without the
13 transfer.

14 JUDGE CHACHKIN: Well, you certainly could explore
15 what was happening with the Conant loan that occluded them
16 from going forward.

17 MR. BLOCK: Right.

18 JUDGE CHACHKIN: I mean that's the gist of it.

19 MR. BLOCK: Exactly.

20 JUDGE CHACHKIN: It doesn't matter that they had
21 this other financing.

22 MR. BLOCK: If you word this question to Mr.
23 Loftus, when you decided that you would help fund RBL, did
24 you have any understanding what RBC's financial situation
25 was and whether RBC could do it without RBL, is that --

1 JUDGE CHACHKIN: That's what Loftus said in his
2 statement specifically, that his funding would take place
3 only if the assignment was granted. He said it
4 specifically. So he was saying that he was not interested
5 in the Conant loan. He was only interested in RBL if the
6 assignment was granted. So what's the purpose of asking him
7 that question? He had nothing -- he was relying on the
8 assignment being granted.

9 MR. BLOCK: There's a potential for a -- for
10 information being transmitted to Mr. Loftus by Mr. Rey that
11 I had -- the words to this effect: I don't have any other
12 financing; I need you, which would be an admission if it
13 came out through Mr. Loftus' statement that -- what Mr. Rey
14 told him.

15 JUDGE CHACHKIN: Obviously if Mr. Loftus had any
16 conversation or discussion with Conant, you'd be entitled to
17 that. But there's no evidence whatsoever --

18 MR. BLOCK: We know that --

19 JUDGE CHACHKIN: -- suggesting that Mr. Loftus had
20 any dealings with Mr. Conant.

21 MR. BLOCK: But we know he was with Mr. Rey and
22 Mr. Rey might have told him what Mr. Rey related to Mr.
23 Conant and why he needs Mr. Loftus.

24 MS. POLIVY: Your Honor, may I --

25 JUDGE CHACHKIN: You could explore Mr. Rey. If

1 you can come up with any kind of evidence that there was any
2 kind of connection between Mr. Loftus --

3 MR. BLOCK: Okay.

4 JUDGE CHACKIN: -- and Mr. Conant or Mr. Rey,
5 then we'll see where we are. But right now, there's
6 nothing. So as far as press and the trial staff seeking to
7 depose John L. Loftus concerning the financial
8 misrepresentation issue, RBC opposed the motion of
9 deposition -- the notice of deposition, and seeks a
10 protective order with regard to Loftus. The protective
11 order will be granted.

12 The presiding judge has previously ruled that the
13 financial misrepresentation issue focuses on RBC's claimed
14 reliance on Howard R. Conant for its funding and that RBC's
15 substitution of equity financing by signing the construction
16 permit for Rainbow Broadcasting, Limited has no bearing on
17 RBC's financial qualifications and is not relevant to the
18 designated issue. See my memorandum opinion and order, FCC
19 96N-111 released May 13, 1996.

20 Loftus is a general partner of JRL Investments,
21 the company which agreed to provide finance on RBL for the
22 purchase and installation of equipment necessary to
23 establish the statement. See Jarvis Bont's (phonetic)
24 attachment B. Press and the trial staff have not shown any
25 involvement by Loftus in the Conant loan and his deposition

1 will not be taken.

2 All right. That disposes of the Loftus matter.
3 The next thing is the joint notice of deposition of Margot
4 Polivy and Katrina Renouf. And I'm prepared to listen to
5 some discussion if the parties wish concerning the notice.
6 And I might add that as far as I could see, there are two
7 separate matters. One is the deposition of Ms. Renouf as to
8 the ex-party issue and the deposition of Ms. Polivy and Ms.
9 Renouf as to the remaining issue. Now, if the parties want
10 to offer any brief discussion further on the matter, I'll
11 listen to it. Otherwise, I'm prepared to rule on that
12 matter.

13 MR. BLOCK: We believe that we briefed it -- our
14 response to their motion. We've noted the crime/fraud
15 exception as well as the Hanguards issue which I think are
16 two separate bases for deciding that the attorney's here
17 privilege is not -- doesn't -- cannot be used as a shield
18 against discovery. And if you have any further questions
19 about -- about the case law or about the theory, I'll be
20 happy to respond to that.

21 I think the -- the -- we also cited two cases in
22 which in similar situations, one of which was a Commission
23 case, a -- in essence, a misinterpretation issue where the -
24 - where the review board said the claim fraud exception does
25 apply after you meet the standard. And in this case, we

1 believe that the standard has been met both by your sifting
2 of the evidence in deciding that there is a reason for a
3 hearing here, and as well as the -- the Court of Appeals'
4 and the Commission's sifting of the evidence citing that
5 there is probably reason to go forward on a potential
6 misrepresentation.

7 That's all that the crime/fraud exception
8 requires, somebody saying yes, there's something worth
9 looking at here just as if there was a want or a summary
10 judgement motion. That's been met. And, therefore, under
11 the existing authority, we believe that there is sufficient
12 basis to determine that on all of these issues there is the
13 crime/fraud exception as well as likely potential that the
14 Hanguards exception, which would be if the client relies on
15 the attorney's advice that what it's doing is lawful and
16 proper, that is also a reason to waive the privilege. We
17 believe on both grounds all of the issues should be open and
18 we're looking to explore the facts here and get to the
19 answer the Commission has asked us to get to.

20 I want to make one comment. The -- some of the --
21 some of the pleadings, not this one, but I think on the
22 other round, on the sequester motion, have suggested that
23 we're taking sides in this matter. And I want to make it
24 clear for the record that we're not taking sides. We have
25 sided with the parties so far that are seeking to have

1 discovery; seeking to get to the bottom of the case; seeking
2 to answer the questions the Commission has asked.

3 And so far, that has been press because press has
4 been asking for discovery and it's been resisted by the
5 Rainbow parties. But we have no preconceived notion as to
6 how this should come out. Once the evidence is in, we're
7 going to look at it with an independent eye and we're going
8 to file what ought to be an appropriate separate and
9 considered analyses of what the facts show. But the first
10 question is to get the facts, and that's what we're trying
11 to do here.

12 JUDGE CHACHKIN: Now, doesn't Bernstein set forth
13 two conditions that have to be met before you destroy the
14 privilege exception? And I believe those two conditions are
15 first, there must be prima facia evidence that the charge
16 has some foundation of fact; second, there must be some
17 reasonable relationship between the advice and the subject
18 matter of a possible violation. Now, where have you set
19 forth any facts showing -- showing that there was
20 counselor -- that counsel did something wrong when meeting
21 any of the examples which were set forth in the Bernstein
22 case?

23 MR. BLOCK: The crime/fraud exception doesn't
24 require to show counsel did something wrong. What it shows
25 that the counsel can't be used as a shield for what the

1 client is doing wrong.

2 JUDGE CHACHKIN: And where have you shown any
3 evidence by documents or anything else demonstrating that
4 this applies in this case?

5 MR. BLOCK: Well, let's take the --

6 JUDGE CHACHKIN: I mean, you've made a lot of
7 speculation of what could have happened or could not have
8 happened. But that's not facts

9 MR. BLOCK: Let's take Rey's testimony in Florida.
10 All right. We have Mr. Rey testifying that he could not --
11 wasn't certain that Mr. Conant would be giving him
12 financing. You have -- then you have a week later -- you
13 have the client filing a statement ready, willing and able.
14 That's the res geste. The thing that we're talking about
15 here is was that a fraudulent, improper statement or not.
16 Was that a misrepresentation to the Commission?

17 One needs to find out among other things what the
18 client intended by those words. Were those words written by
19 Ms. Polivy or written by the client? Well, one needs to
20 find that out.

21 JUDGE CHACHKIN: Well, wait a minute. You can't
22 use discovery to find it out. First you have to establish
23 that the client in fact used the attorney. You're doing
24 things -- you know, under that theory every case presumably
25 where there's a misrepresentation issue you could claim that

1 there's always a possibility that the attorney might have
2 been involved and, therefore, you're going to engage in
3 discovery and the attorney-client privilege no longer
4 applies.

5 MR. BLOCK: Well, Mr. Rey wasn't acting pro se.
6 He filed --

7 JUDGE CHACHKIN: I understand that. But there are
8 many, many cases that we have involving misrepresentations
9 issues. And I'm not aware in any case where the attorney-
10 client privilege has been waived by a mere fact that there's
11 a misrepresentation issue. And I mean you could assume that
12 every case, presumably, that the attorney played some role
13 in it and, therefore, you want to get to the bottom of the
14 facts and, therefore, you want the attorney to testify.
15 Then there would be no privilege any more under those
16 circumstances in any misrepresentation case. That's why the
17 Commission in Bernstein set forth two difficult conditions
18 that have to be first met. And in Bernstein, there were
19 documents which -- which -- well, they left it for the
20 judge. But --

21 MR. BLOCK: Your Honor --

22 JUDGE CHACHKIN: -- first you have to show there
23 are facts which implicate the attorney in some way. You
24 have not offered anything. Your theory is first we'll go
25 find the -- use discovery. The waiver won't exist and we'll

1 go find the facts. Then after we've found the facts, then
2 we'll use them. That's not the way it works. Your job is
3 first to make a prima facie case justifying an exception to
4 the attorney-client privilege. Otherwise, the attorney-
5 client privilege would be meaningless.

6 MR. BLOCK: We understand that just an allegation
7 is not sufficient.

8 JUDGE CHACHKIN: Well, that's all we have here is
9 allegation. You haven't produced any documents implicating
10 counsel in anyway.

11 MR. BLOCK: Wait a minute. You keep on saying
12 implicating counsel.

13 JUDGE CHACHKIN: Or implicating any way that
14 counsel was somehow used in some form or fashion.

15 MR. BLOCK: Here's the first question: "Mr. Rey,
16 did you ever talk to your counsel about what you wanted to
17 file? Objection, attorney-client privilege." This is a
18 question to Mr. Rey. Why? Because they're using the
19 privilege as a shield against inquiring about what he told
20 his counsel about what he wanted to file.

21 JUDGE CHACHKIN: Well, wait a minute --

22 MR. BLOCK: No, that's -- Your Honor, that is the
23 very question that we're talking about, about a crime-fraud
24 exception. If the client can use the attorney as a shield
25 to --

1 JUDGE CHACHKIN: Well, wait a minute. He's not
2 using his attorney as a shield under your -- the question
3 you've put. He's taken full responsibility. If he's -- if
4 he's not answering the question as to whether he relied on
5 his counsel, and that will get your first exception -- first
6 reason for waiving attorney-client privilege --

7 MR. BLOCK: Yes.

8 JUDGE CHACHKIN: -- that means the licensee is
9 saying that I bear full responsibility; I'm not relying on
10 counsel; I did it.

11 MR. BLOCK: So if you can't ask a question to
12 the -- if the attorney-client privilege is going to prevent
13 inquiry into what transpired between the counsel and the
14 client --

15 JUDGE CHACHKIN: I mean, that's the purpose of the
16 attorney-client privilege.

17 MR. BLOCK: Right, right. But --

18 JUDGE CHACHKIN: I mean that's what it is there
19 for, to -- so that confidential communications are
20 protected.

21 MR. BLOCK: And the reason we have an exception is
22 so that we can inquire into matters in which the client is
23 using the attorney -- and merely filing -- the cases show
24 that merely filing a document using the attorney's name is
25 sufficient to get to that -- that's not a hard standard to

1 meet --

2 JUDGE CHACHKIN: Well --

3 MR. BLOCK: -- because you use the attorney.

4 JUDGE CHACHKIN: The fact that an attorney files a
5 document is not a basis by itself for destroying the
6 privilege. If it was, in every instance where there's a
7 misrepresentation case issue, the attorney-client privilege
8 would be destroyed. But that's not the situation.

9 MR. BLOCK: In most cases, Your Honor, we don't
10 have a situation where we've had an already -- a testimony
11 by the client in another proceeding which is -- nor do we
12 have a Court of Appeals saying there is a potential
13 inconsistency here between the testimony given in Florida
14 and what was filed into the Commission. The Court of
15 Appeals doesn't usually review the evidence and give you a
16 finding on that issue or a remand of an issue before you
17 have your hearing. That is a unique fact.

18 And that's a unique situation which was not
19 involved in Bernstein and which gets you to the point of
20 saying there is a prima facie case. If this is not a prima
21 facie case, tell me what would be a prima facie case in that
22 case. There is none.

23 JUDGE CHACHKIN: Well, you have to come up with
24 facts and you have to show a document saying that there were
25 discussions between the parties in which counsel was told

1 something or the lawyer filed a document knowing what the
2 facts were. But you don't have any such documents at this
3 stage nor any evidence from any witness at this stage.

4 MR. BLOCK: And we'll never get them if we don't
5 get discovery.

6 JUDGE CHACHKIN: Well, I don't know what you'll
7 get. I mean, maybe in your discovery you'll come up with
8 something. I don't know. But right now you haven't come up
9 with anything. I mean, under your theory, there never would
10 be -- I mean, there would -- the attorney-client privilege
11 would be meaningless.

12 MR. BLOCK: I respectfully say that under your
13 theory, the exception is meaningless because you never get
14 to the point of looking for it. But that's -- I think
15 that's the, you know --

16 JUDGE CHACHKIN: Well --

17 MR. COLE: Your Honor, may I just request --

18 JUDGE CHACHKIN: Yes

19 MR. COLE: -- a clarification?

20 JUDGE CHACHKIN: Yes

21 MR. COLE: The discussion so far has centered on
22 misrepresentation. Are you going to take up ex parte later
23 on or are you --

24 JUDGE CHACHKIN: No, I'm going to deal with that.

25 MR. COLE: Do you view ex parte to be a part of

1 this discussion, too? Because there, there are clearly --

2 JUDGE CHACHKIN: Well, we don't have the attorney-
3 client problem in ex parte because we have a waive already
4 of that. So we're not dealing with that.

5 MR. COLE: Okay.

6 JUDGE CHACHKIN: We're only dealing with the other
7 issues.

8 MS. POLIVY: Your Honor, may I --

9 JUDGE CHACHKIN: Yes.

10 MS. POLIVY: -- just make one observation? Rule
11 503 which Mr. Block cited to you, the exception that he's
12 referring to -- and I don't want to argue the rest of this;
13 I think it's been ventilated -- if the services of the
14 lawyer were sought or obtained to enable or aid anyone to
15 commit or plan to commit what the client knew or reasonably
16 should have known to be a crime or fraud is when that
17 exception applied. The commentary stands for the
18 proposition that the engagement of the attorney initially
19 had to be for the purposes of committing or furthering a
20 crime or a fraud.

21 In fact, there's commentary in here for the
22 proposition that if the attorney was retained for perfectly
23 valid purposes initially, that exception does not apply
24 unless you can show in a specific instance where that
25 occurred. And when they define crime or fraud, Your Honor,

1 they are defining things punishable by the penal code. Mr.
2 Block's interpretation of the rule, first of all, is not the
3 rule that he referenced you to. Rule 503, which was by the
4 way a rejected rule of evidence --

5 JUDGE CHACHKIN: Yes

6 MS. POLIVY: -- that the Congress did not -- this
7 was cited to you. And I'd just like to note for the record
8 that Mr. Block's citation of 513 in section 5501 on page 513
9 for the proposition applies to administrative proceedings.
10 That proposition does not appear on that page.

11 JUDGE CHACHKIN: Well, Bernstein apparently has
12 put it in administrative proceedings.

13 MS. POLIVY: But in Bernstein, they use the same
14 formulation. And also, I'd like to note in Bernstein, I do
15 not one -- we never had an opportunity to respond to the
16 argument that was made. But Bernstein stands for the
17 proposition that this is not a crime/fraud matter. This is
18 a very serious matter that --

19 JUDGE CHACHKIN: Oh, I agree.

20 MS. POLIVY: -- the Commission should be fully
21 briefed. It isn't just something that you wave a wand and
22 say an exception applies.

23 JUDGE CHACHKIN: All right. Anything further?
24 Otherwise, let me rule on it. First of all, on press and
25 the trial staff seek to depose Katrina Renouf and Margot

1 Polivy as to designated issues 1, 2, 3 and 4, RBC and RBL
2 opposed and request protective orders as to all issues with
3 respect to Renouf and as to issues 2, 3 and 4, with respect
4 to Polivy. The request for a protective order with respect
5 to Renouf as to issue 1 will be denied.

6 Renouf and Polivy are partners of the law firm,
7 Renouf & Polivy, which has represented RBC and RBL for many
8 years. Having served in that capacity, Renouf's deposition
9 is reasonably calculated to lead to discovery of evidence
10 which is admissible under designated issue 1 as is required
11 under the section 1.311(b) of the rules. So I'm going to
12 permit the deposition of Ms. Renouf as to issue 1.

13 MS. POLIVY: Your Honor?

14 JUDGE CHACHKIN: Yes

15 MS. POLIVY: May I -- I'm sorry, I didn't realize
16 we were addressing issue 1, as well. I would like to note
17 that except to the extent that Ms. Renouf acted as counsel
18 in signing pleadings, the only question would be whether or
19 not she had contact to the staff.

20 JUDGE CHACHKIN: Or contact with you or Ms. Cook
21 concerning the ex parte matter. All those things she could
22 be questioned on. The question is intent and any knowledge
23 she has dealing with intent -- because that's what we're
24 dealing with; an intentional ex parte. And it seems to me
25 in her position as co-counsel that she may or may not have